IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1622 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JANKIDAS CHANDRATAN & 1 - Appellant(s)
Versus
MUKESH DYEING & 1 - Defendant(s)

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Appearance :
MS KUSUM M SHAH for Appellant(s) : 1 - 2.
MR NP NANAVATI for Defendant(s) : 1,
MR KS SHAH for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2006

ORAL JUDGMENT

By way of this appeal, the appellant herein original defendant Noss.1 and 3 (hereinafter referred to as “the defendants”) have challenged the judgment and decree passed by the learned City

Civil Court at Ahmedabad dated 30-6-1987 passed in Civil Suit No.2436 of 1981 by which the learned trial Court has decreed the said suit by directing the defendants to pay to the plaintiff a sum of Rs.57,268.94paisa inclusive of interest of Rs.16,431/- and future interest calculated at the rate of 6% per annum towards the principal amount of Rs.40,837.94paisa from the date of institution of the suit till its payment or realization.

2. The plaintiff, a partnership firm filed the aforesaid civil suit in the learned City Civil Court at Ahmedabad to recover Rs.57,268.94paisa with future interest against the defendants. It was averred in the plaint that as the defendant No.1 firm was in need of finance for its business purpose, and so its partner defendant No.2 on behalf of defendant No.1 firm approached one of its partner Pahelajraj and requested for advancing money loans of Rs.39000/- on 8-2-78 and again it advanced a money loan of Rs.26,000/- to the defendant No.1 firm and the cheques for the said amounts were issued and they were realized and defendant No.1 firm received the aforesaid amounts. It was the case of the plaintiff that thereafter defendant No.1 firm paid in all Rs.24,162.06paisa by goods, cash and cheques between dated 23-2-78 and 15-9-78 but thereafter defendant No.1 firm did not pay any further in spite of the repeated demands made for the same and thus, the defendants failed and neglected to make the payment of the amount due to it.

It was also the case of the plaintiff that the amount due to it was Rs.57,268.94paisa inclusive of Rs.16,431/- as interest calculated at the rate of 12% per annum after deducting the amount of Rs.24,162.06paisa paid to it and therefore, the plaintiff firm instituted the aforesaid suit to recover the aforesaid amount. Initially, the suit was instituted as summary suit and after service of summons, the defendants filed their appearance and leave to defend at Exh-17 and after the same was granted unconditionally, the suit was transferred on the list of long causes and thereafter the defendants filed purshish at Exh-27 and requested to treat the said leave to defend application as their written statement. In the written statement, though the suit claim was denied, however, it was admitted that money loan of Rs.39,000/- was advanced to the defendant No.1 firm by the plaintiff firm on 18-2-78 and then another money loan of Rs.26000/- was advanced to defendant No.1 firm by the plaintiff firm on 21-2-78. But according to them, both these transactions were separate and they were towards the loan and Sharafi accounts respectively and they have repaid the amounts due of Sharafi account of Rs.26000/- by payment of cash, cheques and goods and in fact their amount of Rs.972/- remained due from the plaintiff firm. So far as the amount of 39000/- is concerned, it was submitted that the said has become barred by limitation and therefore, the plaintiff firm is not entitled to recover the same. It was denied that both these transactions were of one

account and as per their version, the plaintiff firm in order to bring the claim of Rs.39000/- towards loan account within limitation has made an attempt to treat both these distinct transactions as part of one transaction. The learned trial Court raised the issues at Exh-32. On behalf of the plaintiff firm, one of its partner Pahelajraj and its Accountant Clerk Harishbhai Magandas came to be examined in support of its claim. The documentary evidence is also produced with list Exhs-3,31,57 and 124. on the defendants side, defendant No.3 Moolchand Rughlal was examined. Certain documentary evidences were also produced with lists Exhs-18,43,75,94,112 and 146. After considering the oral as well as documentary evidence, the learned trial Court held that the suit was within the prescribed period of limitation and that the amount of Rs.26000/- as alleged to have been paid to the plaintiff, was not proved and that the defendants paid the amount of Rs.24,162.06paisa only to the plaintiff firm and thus passed a decree for an amount of Rs.57,268.94paisa inclusive of interest at Rs.16,431/-. Being aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court, the defendants have preferred the present appeal.

3. The learned advocate appearing on behalf of the parties are absent. However, this being an old appeal of 1987, this Court decided to dispose of the present appeal on merits ex parte.

4. On considering the documentary as well as oral evidence, it appears that the money loan of Rs.39000/- was paid to the defendants on 18-2-78 and again they advanced money loan of Rs.26,000/- on 21-2-78 and that cheques for the said amount were issued and they were realized and the defendants received those amounts and they also passed receipts vide Exhs 46 and 47 respectively for the aforesaid amount. It has also come on record that in all Rs.65,000/- was paid by way of advance loan to the defendants. It has also come on record that in all Rs.24,161.06paisa was repaid between 23-2-78 and 15-9-78 by goods, cash and cheques. Thus, after adjusting the amount of Rs.24,162.06paisa, the amount of Rs.40,837.94paisa remained due to the plaintiff firm towards principal. Considering various entries and the last transaction, it cannot be said that so far as the claim towards Rs.39,000/- is concerned, the same has become time barred. The learned trial Court has rightly held that both the transactions cannot be said to be different and distinct transaction and therefore, the learned trial Court has rightly decreed the suit by holding that the claim for an amount of Rs.39,000/- is not barred by limitation. Considering the aforesaid and various transactions between 18-2-78 and 15-9-78, the learned trial Court has rightly held that an amount of Rs.40,837.94paisa was due and payable to the plaintiff firm and has rightly decreed the suit. On considering

the record and proceedings and the documentary as well as oral evidence, this Court is in complete agreement with the learned trial Court while decreeing the suit.

5. For the reasons as stated above, the appeal fails and the same is dismissed. No costs. Ad interim relief if any granted earlier stands vacated forthwith.

(M.R.SHAH,J.)

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